

intoxilyzer or breatholyzer exam, but on the basis of physical tests that they give them.

PRESIDENT: Excuse me, Senator, again. (Gavel.) Could we have the level of noise down a little bit so we can hear the speakers, please. Thank you, Senator McFarland.

SENATOR MCFARLAND: Thank you, Mr. President. I appreciate that. They give a whole series of tests, they start out with having them repeat the alphabet. And if they can repeat the alphabet, then they do something like having them count backwards from 100. And if they can do that then they ask them to close their eyes and extend their arm and try to touch the tip of their nose. And then they have a test, I think they call it a...I can't remember the exact term, but they have them stand with their feet together, they have them close their eyes and lock up at the sky...or raise their head toward the sky to see if they have stability to stand in one place. All of those tests are excellent at determining whether or not someone is intoxicated, because truly if someone is intoxicated you can get a conviction based upon the failure of those tests, because people slur their words, their eyes are bloodshot, they take these tests and fail them, and there is no way, as a defense attorney or as a lawyer representing one of these persons charged, that you can defend that type of case and get a not guilty verdict if the physical tests have been administered properly, independent of whether or not there was a breatholyzer test. They have a whole series of them. The State Patrol is superb at this. I mean if I get someone that has been picked up by a state patrolman, 90...over 99 percent of the time I think you look at those physical exams and if those physical exams show that the person was intoxicated it's almost impossible to plead not guilty and win. So that is a false assumption. You don't need to coerce people into taking an intoxilyzer. The present system works because even if they don't, they can still be convicted on the physical examination. The second thing that is wrong with this whole thing, I don't think it has ever been addressed and that is the dilemma that I pointed out earlier and I would appreciate Senator Hall or Senator Wesely or Senator Lamb giving me an explanation of what you tell the person who is innocent and because of a fear, a misunderstanding, refuses to take the intoxilyzer test. What do you tell that person when they come to you as an attorney and they say to you, I'm sorry, I was fearful, I didn't have the advice of an attorney, I didn't take the intoxilyzer, what happens if I plead guilty or not